

IN THE OFFICE OF ADMINISTRATIVE HEARINGS  
BEFORE THE BOARD OF LAND COMMISSIONERS  
STATE OF WYOMING

IN THE MATTER OF CONFLICTING	)
LEASE APPLICATION BY	) OAH DOCKET NO. 18-139-060
BARLEAN'S ORGANIC OILS, LLC	) STATE LEASE NO. 1-8907

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**JOINT MOTION TO DISMISS**

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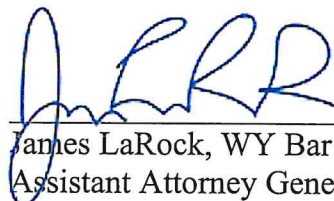
The Wyoming Office of State Lands and Investments, through the Wyoming Attorney General's Office, and Barlean's Organic Oils, LLC hereby jointly move to dismiss the above-captioned case.

1. In *In the Matter of Conflicting Lease Application by Kelley Cattle Company*, State Lease No. 3-7619, and *In the Matter of Conflicting Lease Application by Bummer Ranch Limited Partnership*, State Lease No. 3-8742, the Board of Land Commissioners denied cross-motions for summary judgment on the grounds that Wyo. Stat. Ann. § 36-5-105(b) is ambiguous and held that the Office must promulgate a rule interpreting the statute.

2. Under these circumstances, it would be inefficient to continue to pursue motions similar to the motions for summary judgment filed in *Kelley Cattle Company* and *Bummer Ranch Limited Partnership* with the Board.

Wherefore, the Office and Barlean's respectfully request the Board dismiss the appeal in this matter and direct the Office to restart the vacant leasing process for Lease No. 1-8907 after the Board has adopted rules related to leasing vacant land.

**DATED** this 18th day of May, 2020.



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ORGANIC OILS, LLC*

## CERTIFICATE OF SERVICE

I hereby certify that, on this 16<sup>th</sup> day of June 2020, the foregoing **JOINT MOTION TO DISMISS** was served in the following manner, addressed to:

Office of State Lands and Investments      ORIGINAL Interagency Mail  
Attn: Jason Crowder, Assistant Director  
Trust Land Management Division  
122 West 25th Street, Suite W103  
Cheyenne, Wyoming 82002-0600

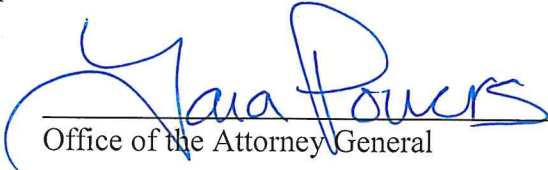
Office of Administrative Hearings      Via US Mail  
2020 Carey Avenue, 5th Floor  
Cheyenne, Wyoming 82002

Clint A. Langer – Attorney for Barlean’s      Via US Mail  
Organic Oils, LLC  
Davis & Cannon, LLP  
40 S. Main Street  
P. O. Box 728  
Sheridan, WY 82801

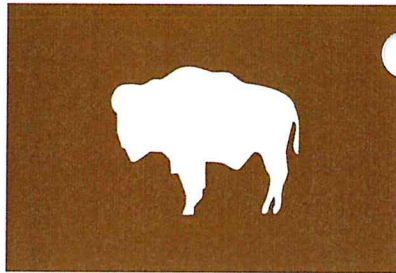
Barlean’s Organic Oils – Unsuccessful      Via US Mail  
Lease Bidder  
Attn: Bruce Barlean, President  
3660 Slater Road  
Ferndale, Washington 98248

Chad and JuliAnna McNutt – Successful      Via US Mail  
Lease Bidder  
P.O. Box 654  
Evansville, Wyoming 82636

James Kaste – Advising Attorney for the      Via Interagency Mail  
Board of Land Commissioners  
2424 Pioneer Avenue, Second Floor  
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\_\_\_\_\_  
Office of the Attorney General

WYOMING O



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MARK GORDON  
Governor

JENIFER E. SCOGGIN  
Director

**WYOMING BOARD OF LAND COMMISSIONERS**  
**Board Order 2019-1**  
**June 6, 2019**

RE: In the Matter of Conflicting Lease Application by Barlean's Organic Oils, LLC  
OAH Docket No. 18-139-060  
State Lease No. 18907

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**  
**DENYING THE MOTION FOR SUMMARY JUDGMENT**

Whereas this matter came before the State Board of Land Commissioners (Board) during its public meeting on April 4, 2019, the next regular meeting following receipt of the Office of Administrative Hearings' recommended decision in this case. The Office of Administrative Hearings (OAH) presided over the contested-case portion of this matter and issued a recommended decision on February 4, 2019. The OAH based its recommended decision upon a December 14, 2018, Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment filed by the Office of State Lands and Investments (State Lands Office). The State Lands Office appeared by and through Assistant Attorney General James LaRock. Barlean's Organic Oils, LLC (Barleans) filed its response to the Motion for Summary Judgment on January 7, 2019. Barleans appeared by and through its counsel Ben N. Reiter and Joel Matteson, admitted pro hac vice. The State Lands Office submitted its Reply to Barleans' Response on January 22, 2019. The OAH closed the record on January 22, 2019, and the parties

agreed and stipulated that there were no genuine issues of material fact and that a contested case evidentiary hearing before the OAH was not needed. Based upon the evidence and arguments, the OAH issued its Recommended Findings of Fact, Conclusions of Law, and Order Granting the State Lands Office's Motion for Summary Judgment.

Based on the recommendations of the OAH, the Board makes the following findings of fact, conclusions of law, and order:

### **I. Jurisdiction**

The OAH had jurisdiction to hear the proceedings and recommend a decision in this matter. Wyoming Statute § 9-2-2022(b) authorizes the OAH to provide hearing services to other state agencies. The hearings are to be “conducted in an impartial manner pursuant to the Wyoming Administrative Procedure Act, applicable provisions of the Wyoming Rules of Civil Procedure, and any rules for the conduct of contested cases adopted by the director of the Office of Administrative Hearings.” Wyo. Stat. Ann. § 9-2-2202(b)(iii).

The Board's Rules (Board Rules) require a contested case hearing upon a timely appeal of conflicting applications to lease lands of the Board. Bd. of Land Comm'rs Rules, Ch. 1, § 7. In addition, the Board Rules incorporate the OAH's Uniform Rules for Contested Case Practice and Procedure (OAH Rules). *Id.*, § 10. The OAH Rules incorporate and adopt Rule 56 of the Wyoming Rules of Civil Procedure, which provides for summary judgment. Office of Admin. Hearings Rules, Ch. 2, § 2.

The State of Wyoming owns the lands covered by State Lease No. 1-8907, and those lands are subject to the Board's jurisdiction. In July 2018, Barleans and Chad and JuliAnna McNutt (McNutts) submitted conflicting applications to lease the land covered by State Lease No. 1-8907 from the Board. On August 6, 2018, the Board Director issued a Director's Decision



awarding State Lease No. 1-8907 to the McNutts. Barleans timely requested a contested case hearing following the issuance of the Director's Decision. On September 11, 2018, the State Lands Office referred this matter to the OAH for purposes of conducting contested case proceedings.

## **II. Statement of the Case**

The State Lands Office advertised for bids to lease the lands covered by State Lease No. 1-8907, which required a minimum annual rental of \$1,671.56. Both Barleans and the McNutts submitted bids for State Lands Lease No. 1-8907. Barleans' bid was for the minimum annual rental amount, while the McNutts' bid was for \$1,940.00. Barleans' bid indicated it owned and controlled land adjoining the lands covered by State Lease No. 1-8907, and the McNutts' bid indicated they did not own or control land adjoining to the lands covered by State Lease No. 1-8907. The Director awarded the lease to the McNutts because the McNutts' bid was for a higher amount of rent. Barleans objected, contending the Director failed to properly apply the preference for adjoining landowners under Wyoming Statute § 36-5-105(b).

## **III. Issue**

The issue in this case, overall, is whether the State Lands Office proved by a preponderance of the evidence the Director's Decision to award State Lease No. 1-8907 to the McNutts was in accordance with the law. So far, the parties have focused on whether the mandated preference for adjoining landholders was properly applied to Barleans under Wyoming Statute § 36-5-105(b) under Wyoming Statute § 36-5-105(b).

## **IV. Findings of Fact**

1. The State of Wyoming owns the lands covered by State Lease No. 1-8907. The lease consists of 1240 acres in Natrona County, Wyoming. [Exhibit (Ex.) D].

2. On July 5, 2018, the State Lands Office advertised for bids to lease the lands covered by State Lease No. 1-8907. The advertisement for bids was open until July 27, 2018, and required a minimum annual rental of \$1,671.56. [Ex. A, p. 1].

3. On July 23, 2018, Barleans submitted a bid for State Lands Lease No. 1-8907. Barleans' bid was for the minimum annual rental amount of \$1,671.56. Barleans' bid further indicated it owned and controlled land adjoining the lands covered by State Lease No. 1-8907. [Ex. A, p. 1; Ex. C].

4. On July 24, 2018, the McNutts submitted a bid for State Lands Lease No. 1-8907. The McNutts' bid was for \$1,940.00. The McNutts' bid indicated they did not own or control land adjoining the lands covered by State Lease No. 1-8907. [Ex. A, p. 1; Ex. B]. The McNutts bid reflected they owned land near the lands covered by State Lease No. 1-8907. [Ex. B, p. 4].

5. Barleans owns approximately 5,726 deeded acres in Natrona County, and possesses rights to federal grazing leases adjoining its deeded property. Barleans' deeded lands and the lands Barleans leases under federal grazing leases both adjoin the lands covered by State Lands Lease No. 1-8907. [Exs. 1, 2].

6. On August 6, 2018, the Board Director issued a Director's Decision conditionally awarding State Lease No. 1-8907 to the McNutts for ten years for a rental amount of \$1940.00. [Ex. D; Ex. 3].

7. On September 4, 2018, the State Lands Office received Barleans' written appeal of the Director's Decision regarding State Lease No. 1-8907. [Appeal Letter submitted with Transmittal Sheet].

8. On September 11, 2018, the State Lands Office referred Barleans' appeal to the OAH to conduct a contested case hearing. [Transmittal Sheet in File].

9. All findings of fact set forth in the following conclusions of law section shall be considered as such and are fully incorporated into this section.

## **V. Conclusions of Law**

### **A. The State Lands Office is Not Entitled to Summary Judgment**

10. Pursuant to the Wyoming Rules of Civil Procedure, a movant must be granted summary judgment if the movant shows that: (a) there is no genuine dispute as to any material fact; and (b) the movant is entitled to judgment as a matter of law. W.R.C.P. 56(a). Here, however, the State Lands Office has failed to show that it is entitled to judgment under the leasing statutes.

11. Because the State Lands Office's interpretation and application of Wyoming Statute § 36-5-105(b) hinges on the assertion of ambiguous statutory language, the State Lands Office is not entitled to judgment as a matter of law unless it can show that the phrase "preference shall be given in all cases" is indeed ambiguous. When interpreting statutes, plain meaning controls: "[w]ords and phrases shall be taken in their ordinary and usual sense[.]" Wyo. Stat. Ann. § 8-1-103(a)(i). The State Lands Office, however, does not present a plain meaning analysis supporting ambiguity. While the term "preference" may have more than one meaning, there is no ambiguity in the mandate that preference shall be given "in all cases." Therefore, the State Lands Office's position that the mandated preference is intended only to serve as a tiebreak in the event of even bids proves unconvincing. Preference must be given in all cases, not only when there are even bids.

### **B. Other Comprehensive Issues**

12. Independent of the State Lands Office's summary judgment motion, there are comprehensive issues of law evident in the parties' respective positions. The State Lands



Office's interpretation of Wyoming Statute § 36-5-108 is inconsistent with plain meaning. Further, Barleans' request that the lease be awarded with an opportunity to match, under Wyoming Statute § 36-5-105(b), is also inconsistent with plain meaning.

13. Although Wyoming Statute § 36-5-108 is not dispositive, because there are no even bids in this case, the State Lands Office's regarding Section 108 raises concerns on how the Office generally interprets the leasing statutes. Wyoming Statute § 36-5-108 provides a tie-break when there are even bid offers: "the director shall grant the lease to the applicant holding title to lands nearest to the lands applied for." Wyo. Stat. Ann. § 36-5-108. The State Lands Office asserts that this tiebreak would not apply to an adjoining land holder because "adjoining" and "nearest" are not the same term. This position, however, disregards the plain meaning of "nearest." "Near" and "adjoining" are both terms to describe physical proximity. *Near*, Black's Law Dictionary (10th ed. 2014); *adjoining*, Black's Law Dictionary (10th ed. 2014). The nearest possible one piece of land can be to another is if they share a border, or adjoin one another. Thus, Wyoming Statute § 36-5-108 would appear to apply as a tiebreak if there are two equal bids and one applicant owns adjoining lands.

14. On the other hand, there are also concerns about how Barleans interprets the leasing statutes. Barleans requests that the lease be awarded to it with an opportunity to match pursuant to the mandated preference under Wyoming Statute § 36-5-105(b). Section 105(b), however, includes no language supporting this position. The opportunity to match is a component of Section 105(c), which controls expiring leases. *See* Wyo. Stat. Ann. § 36-5-105(c). This case regards a vacant lease, not an expiring lease.

15. Based on these considerations, the Board finds there to be comprehensive legal issues that still need to be addressed by the parties before a final decision is issued. *See, e.g.,*

W.R.C.P. 56(f) (requiring notice and an opportunity to respond before entering a decision independent of the motion for summary judgment). The Board cannot yet determine whether the State Lands Office proved by a preponderance of the evidence the Director's Decision to award State Lease No. 1-8907 to the McNutts and not to Barleans was in accordance with law.

## **VI. Order**

It is therefore ordered that:

1. The State Lands Office's December 14, 2018, Motion for Summary Judgment is denied;
2. This matter be returned to the Office of Administrative Proceedings for further contested case proceedings consistent with this written decision;
3. The record be re-opened and the parties be afforded an opportunity to present further arguments and evidence consistent with this written decision; and
4. The Office of Administrative Hearings issue another recommended decision following the parties' opportunity to present further arguments and evidence consistent with this written decision.

This Order is effective immediately and shall remain in effect until amended.

Executed this \_\_\_\_\_ day of July, 2019.

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Mark Gordon, President  
Board of Land Commissioner

IN THE OFFICE OF ADMINISTRATIVE HEARINGS  
BEFORE THE BOARD OF LAND COMMISSIONERS  
STATE OF WYOMING

IN THE MATTER OF CONFLICTING )  
LEASE APPLICATION BY ) OAH DOCKET NO. 18-139-060  
BARLEAN'S ORGANIC OILS, LLC ) STATE LEASE NO. 1-8907

**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER GRANTING OFFICE OF STATE LANDS AND INVESTMENTS' MOTION  
FOR SUMMARY JUDGMENT**

In this case, Barlean's Organic Oils, LLC (Barleans) was the unsuccessful bidder for State Lease No. 1-8907. Barleans appealed the Office of State Lands and Investments' (Office of State Lands or OSL) conditional award of the lease to the successful bidder and the matter was referred to the Office of Administrative Hearings (Office) for hearing. In February 2019, this Office recommended summary judgment be granted in favor of the Office of State Lands; however, in August 2019 the Board of Land Commissioners (Board) rejected that recommendation and returned the case for further proceedings.

Once again, the parties have filed motions for summary judgment. After consideration of the Board's August 2019 Findings of Fact, Conclusions of Law, and Order Denying the Motion for Summary Judgment, the parties pursued additional discovery and are in agreement that there are no issues of fact to be determined at hearing and that this Hearing Examiner may recommend summary judgment be granted in either party's favor. Barleans filed its Motion for Summary Judgment, along with its supporting documentation on March 2, 2020; the Office of State Lands filed its Renewed Motion for Summary Judgment with supporting documentation on March 2, 2020. In addition, the parties filed a Stipulation of Facts. The parties appeared for oral argument on the motions on March 18, 2020.

Based upon the evidence and arguments presented, this Hearing Examiner makes the following recommended findings of fact, conclusions of law, and order:

### **I. JURISDICTION**

This Office is authorized to provide hearing services to other state agencies. The hearings are to be “conducted in an impartial manner pursuant to the Wyoming Administrative Procedure Act, applicable provisions of the Wyoming Rules of Civil Procedure and any rules for the conduct of contested cases adopted by the director of the Office of Administrative Hearings.” Wyo. Stat. Ann. § 9-2-2202(b)(iii) (LexisNexis).

The Board’s Rules require a contested case hearing upon a timely appeal of conflicting applications to lease lands of the Board. Board Rules, Ch. 1, § 7, 060.0002.1.05162017. In addition, the Board Rules incorporate the Office of Administrative Hearings, General Agency Rules (OAH Rules), Chapter 2, 270.0001.2.07202017. The OAH Rules incorporate and adopt Rule 56 of the Wyoming Rules of Civil Procedure, which provides for summary judgment. Board Rules, ch. 1, § 10.

The State of Wyoming owns the lands covered by State Lease No. 1-8907, and those lands are subject to the Board’s jurisdiction. In July 2018, Barleans and Chad and Julianna McNutt (the McNutts) submitted conflicting applications to lease the land covered by State Lease No. 1-8907. On August 6, 2018, the lease was conditionally awarded to the McNutts. Barleans timely requested a contested case hearing following the issuance of the conditional award. The matter was referred to the Office on September 11, 2018, to conduct contested case proceedings. Therefore, this Office has jurisdiction to conduct the contested case proceedings and recommend a decision in this matter.



## **II. STATEMENT OF THE CASE**

The Office of State Lands advertised a bid solicitation for Lease No. 1-8907, with a minimum annual rental of \$1,671.56. Both Barleans and the McNutts submitted bids for State Lease No. 1-8907. Barleans submitted a bid equal to the advertised minimum rental and indicated it owned and controlled land adjoining the lands covered by Lease No. 1-8907. The McNutt's bid exceeded the minimum annual rental amount, and Barleans's bid, by \$268.44, but did not indicate it owned or controlled adjacent lands. The lease was awarded to the McNutts because its bid was for a higher amount. Barleans objected, contending the Office of State Lands failed to properly apply the preference for adjoining landowners under Wyoming Statute § 36-5-105(b) (LexisNexis).

## **III. ISSUES AND CONTENTIONS**

The sole issue in this case is whether, as a matter of law, the Office of State Lands properly awarded the Lease No. 1-8907 to the McNutts and not to Barleans. Specifically, the parties dispute the proper application of the preference for adjoining landowners provided by Wyoming Statute § 36-5-105(b) (LexisNexis).

## **IV. RECOMMENDED FINDINGS OF FACT**

1. The parties submitted the following Stipulate Facts, agreeing the matter could be decided solely on those facts:

1. Barleans is the owner of approximately 5,726 deeded acres of land in Natrona County, Wyoming. Barleans also possesses rights to federal grazing leases adjoining its property.

2. Barleans was, at all relevant times, (i) the owner, lessee, or lawful occupant of lands adjoining those lands included within Lease No. 1-8907, (ii) a legal entity authorized to transact business in the State of Wyoming, and (iii) an entity that had actual and necessary use for the land included within Lease No. 1-8907.

3. The McNutts were, at all relevant times, not the owner, lessee or lawful occupant of lands adjoining those lands included within Lease No. 1-8907.

4. On July 5, 2018, the Office of State Lands advertised a bid solicitation for Lease No. 1-8907 (representing approximately 1,240 acres) in the Casper Star Tribune for a minimum annual rental of \$1,671.56.

5. On July 23, 2018, Barleans offered to pay an annual rental for the lands included with Lease No. 1-8907 equal to the amount determined by the economic analysis pursuant to Wyo. Stat. Ann. § 36-5-101(b), for the use of the forage or other commodity available annually on the land for a period of 10 years. As part of its bid, Barleans indicated that it already owned or controlled land adjacent to Lease 1-8907.

6. On July 24, 2018, the McNutts offered to pay an annual rental for the lands included with Lease No. 1-8907 that exceeded the Office of State Land's minimum bid amount and Barleans's bid by \$268.44 for an annual amount of \$1,940.00. The McNutts indicated on their application that they did not own or control land adjacent to Lease No. 1-8907.

7. Bids closed on July 27, 2018.

8. On August 6, 2018, the Director of the Office of State Lands conditionally awarded Lease No. 1- 8907 to the McNutts.

9. The only finding of fact or conclusion of law supporting the Director of the Office of State Lands decision was that it was "based on the highest rental offer received."

## **V. RECOMMENDED CONCLUSIONS OF LAW**

### **A. Principles of Law**

#### **(i) General and Summary Judgment Principles**

2. The familiar judicial review standard set forth in Wyoming Statute § 16-3-114(c), which requires courts to review final agency actions for an abuse of discretion, findings not supported by substantial evidence, conclusions not in accordance with law or in excess of statutory jurisdiction, and for arbitrary and capricious actions, *is not* the standard applied in a contested case hearing. Instead, the agency making the decision at a contested case hearing shall

determine all relevant factual and legal issues between the parties. *JM v. Dep't of Family Servs.*, 922 P.2d 219 (Wyo. 1996).

3. Regarding summary judgment, the Wyoming Supreme Court has said:

We hold summary judgment is available in contested case hearings before the Office of Hearing Examiners [Office of Administrative Hearings]. It should be invoked when, in the language of Wyo.R.Civ.P. 56(c), "[t]here is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."

*Neal v. Caballo Rojo, Inc.*, 899 P.2d 56, 62 (Wyo. 1995).

4. Wyoming Rule of Civil Procedure 56(c) provides:

(c) *Procedures.* —

(1) *Supporting Factual Positions.* — A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

- (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* — A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* — The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* — An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

5. Rule 56.1 of the Wyoming Rules of Civil Procedure provides as follows:

(a) Upon any motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, in addition to the materials supporting the motion, there shall be annexed to the motion a separate, short and concise

statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In addition to the materials opposing a motion for summary judgment, there shall be annexed a separate, short and concise statement of material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Such statements shall include pinpoint citations to the specific portions of the record and materials relied upon in support of the parties' position.

6. When reviewing a motion for summary judgment, the Hearing Examiner must review the record from the vantage point most favorable to the non-movant and give the non-movant the benefit of all favorable inferences in determining whether there are genuine issues of material fact. *Worker's Comp. Claim of Bodily*, 2011 WY 149, ¶¶ 12 and 16, 265 P.3d 995, 998 and 1000 (Wyo. 2011).

**(ii) State Lands Leasing Principles**

7. The Board consists of the Governor, the Secretary of State, the State Treasurer, the State Auditor, and the State Superintendent of Public Instruction. Pursuant to the State Lands Act, the Board has jurisdiction over "the direction, control, leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature." Wyo. Stat. Ann. § 36-2-101 (Lexis Nexis)

8. The State Lands Act describes those who are qualified to lease state land under the jurisdiction of the Board as follows:

(a) No person shall be qualified to lease state lands unless that person has reached the age of majority, and is a citizen of the United States, or has declared an intention to become a citizen of the United States. No person or legal entity shall be qualified to lease state lands unless he or it has complied with the laws of this state and is authorized to transact business in this state.



Wyo. Stat. Ann. § 36-5-101(a) (LexisNexis). In addition the State Lands Act specifies the basic process for obtaining a grazing lease and renewing an outstanding lease of state lands under the Board's jurisdiction. Wyo. Stat. Ann. §§ 36-5-103 and 104 (LexisNexis).

9. The State Lands Act expressly provides preferences for the leasing of state lands under the jurisdiction of the Board. Specifically, the State Lands Act provides:

(a) All state lands leased by the state board of land commissioners, for grazing and other agricultural purposes shall be leased in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries.

(b) In leasing vacant lands, preference shall in all cases be given to applicants who are bona fide resident citizens of the state qualified under the provisions of W.S. 36-5-101, and to persons or legal entities authorized to transact business in the state, having actual and necessary use for the land and who are the owners, lessees or lawful occupants of adjoining lands, who offer to pay an annual rental at not less than fair market value, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the use of the forage or other commodity available annually on the land for a period of ten (10) years.

Wyo. Stat. Ann. § 36-5-105(a) and (b) (LexisNexis).

**(iii) Statutory Interpretation Principles**

10. When interpreting a statute, the Court seeks to discern the legislature's intent as reflected in the language of the statute. *Vance v. City of Laramie*, 2016 WY 106, ¶ 12, 382 P.3d 1104, 1106 (Wyo. 2016). To discern legislative intent, the Court first must determine whether the statute is clear or ambiguous. *Sinclair Oil Corp. v. Wyo. Dep't of Revenue*, 2010 WY 122, ¶ 7, 238 P.3d 568, 570 (Wyo. 2010). "[A] statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations." *N. Laramie Range Found. v. Converse Cnty. Bd. of Cnty. Comm'rs*, 2012 WY 158, ¶ 37, 290 P.3d 1063, 1077 (Wyo. 2012).

We look first to the plain and ordinary meaning of the words to determine if the statute is ambiguous. A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning

with consistency and predictability. Conversely, a statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations.

*RME Petroleum Co. v. Wyo. Dep't of Revenue*, 2007 WY 16, ¶ 25, 150 P.3d 673, 683 (Wyo. 2007)

11. “The fact that the parties have differing opinions on the statute’s meaning is not conclusive as to ambiguity.” *Wyodak Res. Dev. Corp., v. Wyo. Dep't of Revenue*, 2017 WY 6, ¶ 25, 387 P.3d 725, 732 (Wyo. 2017) (citations omitted). “If the statutory language is sufficiently clear and unambiguous, the Court simply applies the words according to their ordinary and obvious meaning.” Effect is given to each word, clause, and sentence chosen by the legislature, and each word, clause, and sentence are construed *in pari materia*. “A statute is not interpreted in a way that renders a portion of it meaningless or adds language to it.” *Id.* at ¶ 26.

12. Only when a statute is determined to be ambiguous may a court resort to rules of statutory construction to discern the Legislature’s intent. *Id.* at ¶ 27. When a statute is ambiguous the court looks to the mischief the statute was intended to cure, the historical setting surrounding the enactment of the statute, public policy of the state, and to the rules of statutory construction. *Chevron v. Dept. of Revenue*, 2007 WY 43 ¶ 15, 154 P.3d 331, 335 (Wyo. 2007).

13. “[A]n agency’s interpretation of the statutory language which the agency normally implements is entitled to deference, unless clearly erroneous.” *Wyo. Dep't of Revenue v. Exxon Mobil Corp.*, 2007 WY 112, ¶ 31, 162 P.3d 515, 526 (Wyo. 2007).

## **B. Application of Principles of Law**

14. There are no genuine issues of fact in this case and this Hearing Examiner recommends the Board enter judgment as a matter of law in the Office of State Lands’ favor.

15. Both of the bidders timely and properly submitted bids in accordance with the bid advertisement. Both of the bidders are qualified to lease State Board lands and offered rent

amounts equal to or more than the minimum annual rent set by the State Board. Barleans's bid was for \$1,671.56, and the McNutt's bid was for \$1,940.00. Barleans owns and controls land adjoining the lands covered by Lease No. 1-8907, the McNutts do not own or control any land adjoining the lands covered by Lease No. 1-8907. The Office of State Lands Director awarded the lease to the McNutts because their bid was the highest rental offer received.

16. Subpart (a) of the statute requires the Office of State Lands to lease state land to the greatest benefit of state land trustees. Subpart (b) of the statute requires the Office of State Lands to give preference to certain applicants. *See* Wyo. Stat. Ann. § 36-5-105(b) (LexisNexis).

17. The Office of State Lands' historic interpretation of Wyoming Statute § 36-5-105(b) (LexisNexis) is guided by *Cooper v. McCormick*, 69 P. 301 (Wyo. 1902). There, the Wyoming Supreme Court held that the vacant-land preference—in an earlier version of the vacant-land leasing statute—was intended to break a tie “evidently . . . only where other things are equal.” *Cooper*, 69 P. at 303. Otherwise, the Court explained, the preference would mean that “in all cases and under all circumstances where there should be more than one application . . . the application of an [ordinary applicant] should be rejected in favor of a [preferred applicant][.]” *Id.* The Office of State Lands contends that reading of the preference would encourage those with a statutory preference to bid the lowest amount possible frustrating the Office of State Lands' objective to earn the greatest benefit to the state land trustees—public schools. This Hearing Examiner finds that reasoning to be persuasive.

18. Where a statute is ambiguous, some deference to the interpretation by the agency charged with the execution of the statute should be given unless that agency's interpretation is clearly erroneous. *Campbell Cty. Sch. Dist. v. Catchpole*, 6 P.3d 1275, 1285 (Wyo. 2000). Here, the State Lands Office's historical interpretation of Wyoming Statute § 36-5-105(b) (LexisNexis)

is the preference applies only if all of the competing bids are otherwise equal. That interpretation is reasonable and not clearly erroneous.

19. The Office of State Lands' interpretation is consistent with the stated purpose of the Act. Wyoming Statute § 36-5-105(a) (LexisNexis) provides that state lands "be leased in such a manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries." Applying the adjoining lands preference only when there are equal bids encourages higher rental bids from adjoining landowners, which is to the financial benefit of the state land trust beneficiaries. Awarding the lease to a lower bidder, but one with adjoining lands, would not be any benefit the state land trust beneficiaries.

20. Therefore, this Hearing Examiner recommends the Board uphold the Office of State Land's decision to award Lease 1-8907 to the McNutts was in accordance with law.

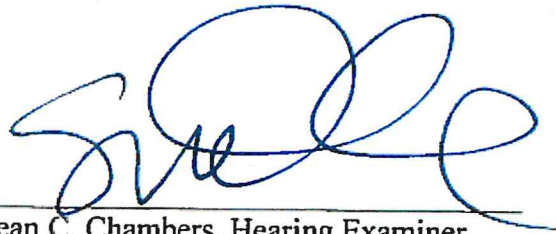
## **VI. ORDER**

IT IS THEREFORE RECOMMENDED that:

1. The State Lands Office's Motion for Summary Judgment is **GRANTED** and the award of the lease to the McNutts is upheld.
2. This case is returned to the Board for a final decision.
3. Pursuant to Wyoming Statute § 16-3-109 (LexisNexis) and OAH Rules Chapter 2, Section 27, the parties shall have ten days in which to file exceptions to this Recommended Order with the Board.



DONE this 24 day of April, 2020.



Sean C. Chambers, Hearing Examiner  
State of Wyoming  
OFFICE OF ADMINISTRATIVE HEARINGS  
1800 Carey Avenue, Fifth Floor  
Cheyenne, Wyoming 82002-0270  
(307) 777-6660

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served by mailing a true and correct copy, postage prepaid, on the 24 day of April, 2020, addressed to the following:

Office of State Lands and Investments - (ORIGINAL)  
Attn: Jason Crowder, Assistant Director  
Trust Land Management Division  
122 West 25<sup>th</sup> Street, Third Floor  
Cheyenne, Wyoming 82002-0600

Barlean's Organic Oils, LLC – Unsuccessful Lease Bidder  
Attn: Bruce Barlean's, President  
3660 Slater Road  
Ferndale, Washington 98248

Joel Matteson – Attorney for Barlean's Organic Oils, LLC  
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Office of Administrative Hearings